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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,346	10/10/2003	Joseph Raymond Luc Bordelau	6.30.3087 US CIP 5 (LBT02)	8732
7590	11/03/2005		EXAMINER	
Paul Grandinetti Levy & Grandinetti 1725 K Street N.W. Suite 408 Washington, DC 20006-1419			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 11/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/682,346	BORDELEAU ET AL.
	Examiner	Art Unit
	Adepeju Pearse	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

Applicant is advised to update the continuation data on page 1 of the specification.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claim recites that the process liquid is maintained at a temperature of from about 25°C to about 90°C. This range has not been disclosed in the specification. Appropriate correction is required.

### *Claim Rejections - 35 USC # 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action'.

A person shall be entitled to a patent unless -

- (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-24 are rejected under 35 U.S.C. 102(b) as being anticipated by German

Pilsener lager beer ([www.eat-online.net/english/habits/germany\\_habits.htm](http://www.eat-online.net/english/habits/germany_habits.htm)) and ([www.economicexpert.com/a/Pilsener.htm](http://www.economicexpert.com/a/Pilsener.htm)). The references and rejections are incorporated as cited in the previous office action. Applicant's arguments filed September 16<sup>th</sup> 2005 have been fully considered but they are not persuasive.

Applicant states that they strongly disagree that 0.33-ppm riboflavin is "about 0.2 ppm." 0.3 and 0.2 are not patentably distinct. It is suggested that applicant submits a criticality data as to why a hopped malt beverage with riboflavin content of 0.33ppm is not as equally stable as a hopped malt beverage with riboflavin content of 0.2ppm

#### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 1761

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6, 8-9, and 13-14 of U.S. Patent No. 6,649,204. Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited patent ~~discloses~~ <sup>claims</sup> a hopped malt beverage having enhanced stability to light by treating a process liquid with an effective amount of actinic radiation from a lamp having a power output greater than 20% between about 410 and about 450nM. This range is within the current application's requirement of a lamp with a power output of at least 90% between about 300 and less than about 800nM. Claim 2 recites that the hopped malt beverage is beer. Claim 6 recites that the process liquid is wort. Claim 8 recites that riboflavin content is reduced to less than 0.07ppm. Claim 9 recites that riboflavin content is reduced to less than 0.03ppm. Claim 13 recites that the process liquid is maintained at a temperature of from about 25oC to about 90oC during the treatment with actinic radiation. Claim 14 recites that the process is a continuous process and the irradiation is carried out in a static mixer.

5. Claims 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4-5, 12-16 and 21 of U.S. Patent No. 5,582,857. <sup>in view of U.S. Pat. No. 6,649,204</sup> Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited patent ~~discloses~~ <sup>claims</sup> in claim 1, a hopped malt beverage having enhanced light stability with a riboflavin content of less than 0.2ppm. Claim 2 recites a hopped

malt beverage having a riboflavin content of less than 0.1ppm. Claim 4 recites a beverage with a riboflavin content of less than 0.07ppm. Claim 5 recites a beverage having a riboflavin content of less than 0.03ppm. Claim 12 recites a process for the production of beer wherein the process liquid is hopped to produce a beverage having a riboflavin content reduced to 0.2 ppm by treating the liquid with an effective amount of actinic radiation having a wavelength greater than 300nM. This range is within the current application's range. Claim 13 recites that the process liquid is wort and claim 21 recites that the process liquid is maintained at a temperature of from about 25°C to 90°C during treatment with actinic radiation.

6. With regard to claim 19, patent #5,582,857 did not disclose that the process is a continuous process and the irradiation is carried out in a static mixer. However, patent # 6,649,204 recites in claim 14, a process for the production of a hopped malt beverage whereby the process is a continuous process and the irradiation is carried out in a static mixer. The resulting beverage has a riboflavin content reduced to less than about 0.2ppm and has enhanced stability to light. It would have been obvious to carry out the process in a static mix in order to ensure the desired result of less than 0.2ppm.

7. Claims 17-18 and 20-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 8-11 of U.S. Patent No. 5,811,144. Although the conflicting claims are not identical, they are not patentably distinct from each other because the cited patent discloses a process for the production of beer wherein the process liquid is hopped to produce a beverage having a riboflavin content reduced to 0.2 ppm by treating wort with an effective amount of actinic radiation having a wavelength of from 300 to

Art Unit: 1761

700nM, which is within the current application's range. Claim 8 recites a beer having enhanced stability to light with a riboflavin content reduced to less than 0.2ppm. Claim 9 recites a beer with a riboflavin content reduced to less than 0.1ppm. Claim 10 recites a beer having a riboflavin content of less than 0.07ppm. Claim 11 recites a beer having a riboflavin content of less than 0.03ppm.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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